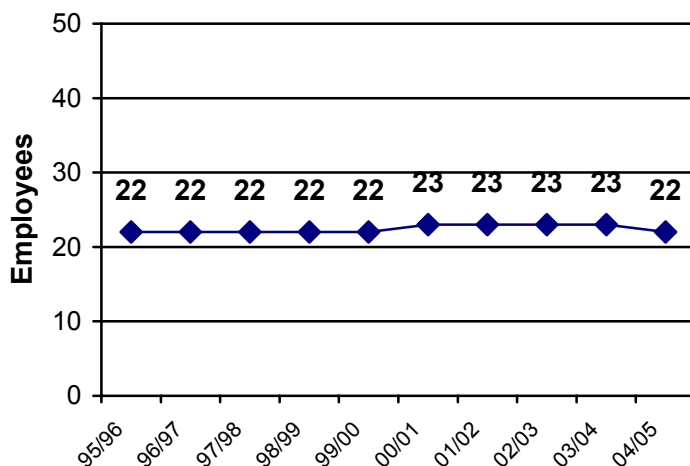


**MISSION STATEMENT**

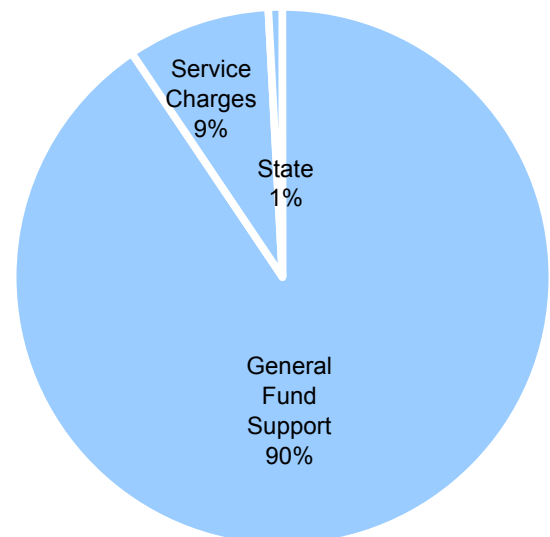
To provide accurate and reliable legal services to County departments, boards, agencies, and special districts in a manner which is cost effective and promotes excellence in delivery of government services to the public.

<u>Financial Summary</u>	<u>2003-04 Actual</u>	<u>2004-05 Actual</u>	<u>2005-06 Requested</u>	<u>2005-06 Recommended</u>	<u>2005-06 Adopted</u>
Revenues	\$ 71,631	\$ 307,595	\$ 475,352	\$ 198,152	\$ 198,152
Salary and Benefits	2,929,589	2,917,104	2,947,320	3,010,318	3,010,318
Services and Supplies	409,476	307,821	272,213	273,330	273,330
Fixed Assets	8,475	0	0	0	0
<b>**Gross Expenditures</b>	<b>\$ 3,347,540</b>	<b>\$ 3,224,925</b>	<b>\$ 3,219,533</b>	<b>\$ 3,283,648</b>	<b>\$ 3,283,648</b>
Less Intrafund Transfers	0	9,763	0	0	0
<b>**Net Expenditures</b>	<b>\$ 3,347,540</b>	<b>\$ 3,215,162</b>	<b>\$ 3,219,533</b>	<b>\$ 3,283,648</b>	<b>\$ 3,283,648</b>
General Fund Support (G.F.S.)	<u>\$ 3,275,909</u>	<u>\$ 2,907,567</u>	<u>\$ 2,744,181</u>	<u>\$ 3,085,496</u>	<u>\$ 3,085,496</u>

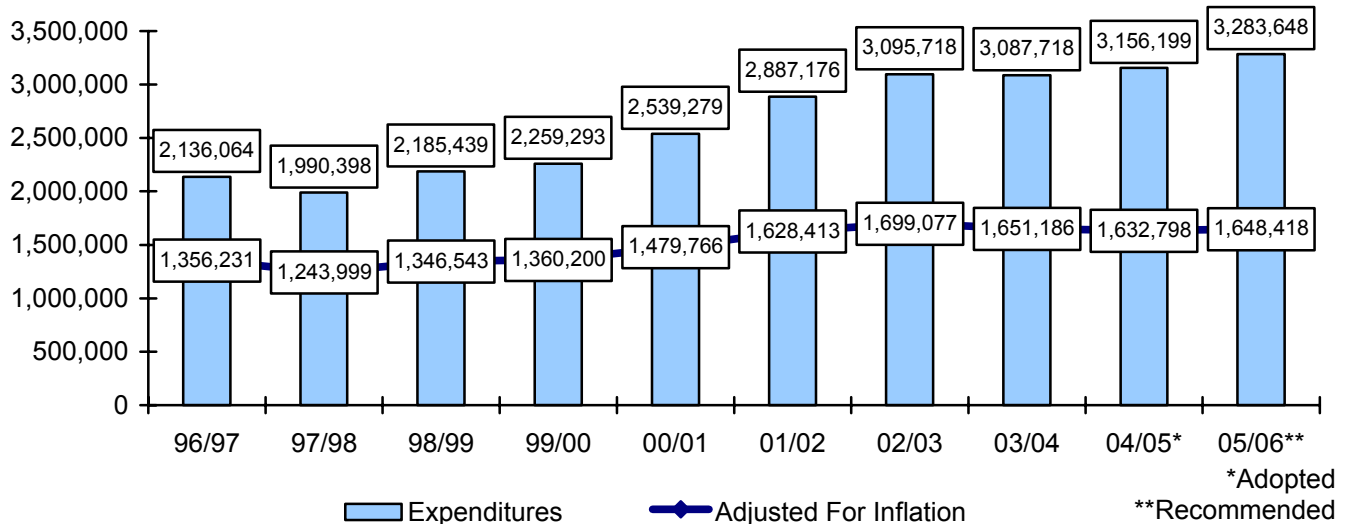
**Number of Employees**  
(Full Time Equivalent)



**Source of Funds**



## 10 Year Expenditures Adjusted For Inflation



### SERVICE PROGRAMS

#### Legal Advice

Provide representation and legal advice to the Board of Supervisors, 73 County boards, commissions, departments, agencies, or divisions (including 5 joint powers agencies to which the County belongs), and to the managers of 24 Board governed special districts, as well as certain legal services to 16 non-Board governed special districts. Conduct legal research; draft, review, and approve agreements, contracts, and projects; and advise County officers regarding their legal responsibilities under federal and state law. Protect the County and its officers from liability and enable the Board of Supervisors to carry out its programs and policies within the limits of the law.

Total Expenditures: \$1,995,835 Total Staffing (FTE): 13.5

#### Litigation

Defend the County and special districts and provide litigation services in complex lawsuits including tax, personnel, contract, and land use matters to minimize liability and maximize County recovery. Represent the County and protect the interests of the client in cases that address the special needs of fragile populations in the community (children referred to Child Welfare Services, residents receiving mental health care and individuals requiring conservatorship), as well as estates without probate representation.

Total Expenditures: \$1,287,813 Total Staffing (FTE): 9

### DEPARTMENT COMMENTS

The Office of County Counsel provides the highest quality legal advice and litigation representation to the Board of Supervisors, County departments, commissions, and special districts in a manner that is cost-effective and promotes excellence in delivery of governmental services to the public. We are proud that our office has been able to handle the increase in complexity and range of activities, legal challenges, and litigation facing our County clients. We have successfully achieved our performance measures despite the expanding workload by implementing management efficiencies, improved technology and longer working hours. This has not been without its challenges, however. In litigation matters, we continue to see an increase in the resources used in the private sector, which may put us at a disadvantage in future litigation efforts.

County Counsel provides representation and legal advice to general fund departments and agencies in the form of drafting, review and approval of agreements, contracts and projects, and advising County officers on legal issues. In addition, we provide legal advice to various boards and commissions in administrative and quasi-judicial proceedings and assist in reviewing and/or preparing the findings for the administrative record that may be the basis for future litigation. These boards and commissions include the Board of Supervisors, Assessment Appeals Board, Subdivision Review Board, Planning Commission, IOD Board, and Civil Service Commission. Failure to advise these boards and commissions during a proceeding could increase the County's liability.

If County Counsel is not adequately staffed, some of the legal work identified below will need to be shifted to outside counsel, or the County's position on these disputes will be compromised. County Counsel charges outside agencies \$110, compared to \$150 to \$350 per hour for outside counsel. In addition, it may be necessary to reduce our objectives for this legal work, as well as our other performance measures.

#### **Examples of Results Achieved in Litigation**

- County Counsel has been instrumental in preserving millions of dollars in property tax revenue, most notably through successful participation in the PG&E bankruptcy case where we recovered \$8,26 million in property taxes and \$733,000 in tax penalties. In FY 2004-05 we received \$240,286 for our legal services in this case (based on a motion we brought before the court.)
- In 2004 this office continued to defend four complex cases brought by telecommunication companies concerning County charges to them for use of County right-of-way. Our office cross-complained against these companies to gain compliance with our ordinances and collect our charges. Through diligent investigation our office discovered evidence that led to a settlement of these cases resulting in a payment to the County in the amount of \$3.5 million in November 2004.
- This office successfully defended another lawsuit by the Deputy Sheriff's Association that sought to compel the County to engage in binding arbitration.
- We continue to assist the Assessor in defending the property tax assessments on Tosco and Duke. Both of these complex property tax assessment cases are now pending in the courts. Our office assisted in settling the Buena Vista Mines CERCLA case. Our County was instrumental in briefing and arguing the State of California v. Babbitt case before the federal District Court and the 9<sup>th</sup> Circuit Court of Appeals. The State and County won at both levels, thereby upholding important federalism principles regarding offshore oil leasing.

#### **Major Focus for FY 2005-06**

Following our Goals and Performance Measures are lists key projects and increased litigation on which County Counsel will provide significant effort in FY 2005-06. Most notably:

- The Flood Control and Conservation District ("District") has two major projects that are expected to require significant effort in FY 2004/05: The Nacimiento Water Project (a \$150 million project expected to take at least 5 years to complete) and the Lopez Water Treatment Facility Upgrade. Our department is requesting an additional .5 Full Time Equivalent Deputy County Counsel position (funded from the District Zone 3 budget) to address this increased workload.
- The Lopez Water Treatment Plant Project has encountered severe problems in its preliminary design phase. The project was predicated upon a series of scientific tests to determine the adequacy of filtration systems that will become key components of the updated Lopez Water Treatment Plant. The testing is far behind schedule and this delay threatens the District's ability to take down state money to assist with the Project. The District has determined that it requires significant legal assistance from this office, and is willing to pay for that assistance at the rate of \$110 per hour.
- The Department of Social Services ("DSS") has experienced an increase in court filings and a doubling of trials in its child dependency caseload. For calendar year 2003, there were 22 trials, 49 trials in 2004, and we expect 70 trials in calendar year 2005. Compounding this situation, the time required to effectively work with each case has increased in comparison to previous years. Our department currently devotes 1.4 FTE to this work, which we have found to be inadequate given the increasing workload and time required for each case. Our department is requesting an additional 1 Full Time Equivalent Deputy County Counsel position to address this increased workload. It is important to note that in order to practice in Juvenile Court, the Court must certify that the attorney is experienced and competent in juvenile dependency matters. Thus this is not work that is easily absorbed by existing staff. It will be imperative to hire an attorney with the required experience in this field to be eligible to do this work.
- We are currently working on preparation of a possible case against another telecommunications company that would have the potential of providing the County with fiber optic communication capabilities across the length of the County.
- Also pending is the resolution of the claim for pollution found underneath the County's new government center construction site. We are currently negotiating with our insurance carrier that provided insurance for removal of pollution of this type. If our claims are rejected or an adequate settlement is not forthcoming, this office will become engaged in litigation with this insurer, and we would expect a seven-figure recovery.

**RECOMMENDED BUDGET AUGMENTATION REQUESTS AND RELATED RESULTS**

Unit Amount	Description	Results
Gross: \$64,115	Add .5 Full-Time Equivalent to provide legal services on the Nacimientto Water Project	To help ensure successful completion of the Nacimientto Water Project. By June 2010.
General Fund Support: \$0		

**COUNTY ADMINISTRATOR'S COMMENTS AND RECOMMENDATIONS**

The recommended budget reflects an increase in General Fund support of \$277,153 (or 7%) compared to the FY 2004-05 Adopted Budget. Expenses are recommended to increase \$127,449 primarily due to the addition of one .5 Full-Time Equivalent Deputy County Counsel IV position to provide legal services to the Nacimientto Water Project Commission and address legal issues on the Lopez Water Treatment Facility upgrade project.

Overall, revenues are projected to decrease by \$99,704 (or (33%)) compared to the FY 2004-2005 Adopted Budget due to the receipt of one time revenue from the Pacific Gas and Electric bankruptcy case of approximately \$240,000 in the current year. However, revenues for legal services rendered is recommended to increase by \$92,000 (or 115%) reflecting approximately 960 hours that will be spent advising the Nacimientto Water Project Commission and legal work done on the Lopez Water Treatment Facility upgrade project.

In their budget request, the department proposed to direct bill the Department of Social Service (DSS) Child Welfare Services Fund for the legal services provided for Child Welfare related trials. This office will be working with County Counsel and the DSS to understand the costs and benefits of this arrangement in the next year. Until that analysis is completed, we will continue the current practice of including these charges in the Countywide overhead charged to DSS, as reflected in the recommended budget.

**BOARD ADOPTED CHANGES**

None.

**GOALS AND PERFORMANCE MEASURES**

<b>Department Goal:</b> Provide exemplary litigation services, defending decisions and advocating positions of our clients to assist those clients in achieving their objectives.						
<b>Communitywide Result Link:</b> A prosperous and well-governed community.						
<b>1. Performance Measure: Percentage of claims filed against the County, which are resolved without litigation, within the reserve amount.</b>						
00-01 Actual Results	01-02 Actual Results	02-03 Actual Results	03-04 Actual Results	04-05 Adopted	04-05 Actual Results	05-06 Target
94%	93%	75%	85%	90%	85%	90%
<b>What:</b> Before a damage lawsuit can be filed against the County, a claim against the County is filed and requires some level of investigation or verification. Costs increase rapidly if the claim becomes a lawsuit.						
<b>Why:</b> Resolving/settling cases without litigation and within the reserve amount saves the considerable costs of litigation involved in discovery and trial.						
<b>How are we doing?</b> As of the end of the 04/05 fiscal year we were below our targeted figure by about 5%. There were 107 claims filed during the fiscal year. Of the 57 lawsuits filed against the county during the fiscal year, 16 of them had been claims.						
<b>2. Performance Measure: Cases litigated where we achieve a positive outcome determined as follows below.</b>						
		04-05 Adopted		04-05 Actual Results		05-06 Target
See narrative for detailed information.		N/A		17 Resolved 159 Pending		7 Resolved 170 Pending
<b>What:</b>	Defend Board of Supervisors legislative and executive decisions. Uphold County officers' decisions. Protect County assets.					
<b>Why:</b>	To implement governmental decisions and protect County proprietary interests.					

**How are we doing?** Of the 21 major cases listed for our 04/05 Performance Measure, 17 have been concluded by court decisions favoring the County or settlements deemed by the Board of Supervisors as favorable to the county. At this time, we have 159 lawsuits pending that involve the County. This does not include conservatorships, juvenile cases or mental health petitions. See updated list of major cases litigated and their results to date.

**Department Goal:** Represent the County and advocate to protect the interests of the client in cases which address the special needs of fragile populations in the community (children referred to Child Protective Services, residents receiving mental health care and individuals requiring financial conservatorship), as well as estates without probate representation.

**Communitywide Result Link:** A safe and well-governed community.

**3. Performance Measure:** Cases in which legal advice is provided to Child Welfare Services and advocate representation is provided in court to achieve the desired outcomes for each case as determined by Child Welfare Services.

00-01 Actual Results	01-02 Actual Results	02-03 Actual Results	03-04 Actual Results	04-05 Adopted	04-05 Actual Results	05-06 Target
Revised measure	Revised measure	412	310	360	394	363

**What:** A large number of cases are filed annually by CWS to protect the children of our community. County Counsel provides legal representation in all court appearances.

**Why:** If strong legal representation is provided to CWS in these matters, then CWS will be successful in protecting the abused and neglected children of our community.

**How are we doing?** The number of cases filed during the 04/05 fiscal year as a bit higher than projected. The number of contested cases continues to escalate.

**4. Performance Measure:** Cases involving people who are unable to care for themselves in which County Counsel represents the County to advocate to achieve the desired outcomes for each client or case as determined by the Public Guardian, Public Administrator or Department of Behavioral Health.

00-01 Actual Results	01-02 Actual Results	02-03 Actual Results	03-04 Actual Results	04-05 Adopted	04-05 Actual Results	05-06 Target
Revised measure	Revised measure	164	150	150	197	154

**What:** The conservatorship and mental health cases in which County Counsel is involved that will protect the rights of those members of our community who are unable to make their own decisions or care for themselves. County Counsel provides legal representation in all court appearances for these matters. (Note: this measure is a consolidation of two separate measures previously used to track conservatorship and mental health cases.)

**Why:** If good legal representation is provided in these matters, the Public Guardian and Public Administrator will be successful in assuring the care of those in the community who are unable to care for themselves and Behavioral Health will be more likely to improve the mental stability of its patients.

**How are we doing?** There are currently 114 active conservatorship cases in which this office is involved. During the 04/05 fiscal year, this office handled 83 cases for the Department of Behavioral Health. This total figure is approximately 24% higher than estimated.

**Department Goal:** Provide accurate, timely, and reliable document review and legal advice for County boards, commissions, departments, and agencies in order to help these clients achieve their objectives without unnecessary litigation or loss.

**Communitywide Result Link:** A prosperous and well-governed community.

**5. Performance Measure:** Percentage of clients who report advice provided by attorneys was clear, relevant and timely.

00-01 Actual Results	01-02 Actual Results	02-03 Actual Results	03-04 Actual Results	04-05 Adopted	04-05 Actual Results	05-06 Target
99%	95%	99%	100%	90%	99%	95%

**What:** Based on interviews with County Department representatives during the yearly attorney evaluation process as well as frequent contact with managers and staff of client departments.

**Why:** Each of our clients operates under a highly technical set of governing laws and regulations. By helping them understand and meet their legal obligations, we help them serve the community, state and nation.

**How are we doing?** We have received 10 complaints and 16 laudatory comments during 2004-05 concerning our attorneys. The Actual Results of 99% is based on over 2300 requests for legal advice during the 04/05 fiscal year.

**6. Performance Measure:** Percentage of projects in which the response to requests for legal advice or contract review are completed on a timely basis.

00-01 Actual Results	01-02 Actual Results	02-03 Actual Results	03-04 Actual Results	04-05 Adopted	04-05 Actual Results	05-06 Target
99%	97%	99%	98%	90%	95%	90%
<p><b>What:</b> Review a variety of legal documents, conduct research, and render opinions as requested, within a time period as determined by an initial review of each particular document.</p> <p><b>Why:</b> To assist our clients in achieving their objectives as expeditiously as possible by minimizing legal complications which could interfere with their objectives.</p> <p><b>How are we doing?</b> During the 04/05 fiscal year, there were 2,326 requests for legal advice. Over 95% were handled in a timely manner.</p>						

**7. Performance Measure:** Percentage of contracted projects and Board of Supervisors agenda items completed without litigation.

00-01 Actual Results	01-02 Actual Results	02-03 Actual Results	03-04 Actual Results	04-05 Adopted	04-05 Actual Results	05-06 Target
99%	99%	99%	95%	99%	99%	98%
<p><b>What:</b> All contracts and agreements are reviewed and approved prior to being presented at the Board of Supervisors meetings. These contracts and agreements pertain to a variety of issues, including capital projects, services, land use, etc. This office provides continuous legal advice while the contract is being administered, as well. All land use planning issues before the Board are reviewed by this office and advice is provided on all such items.</p> <p><b>Why:</b> Providing good legal advice in the review and administration of contracts tends to inversely correlate with the number of lawsuits filed challenging the approval or administration of those contracts. Approval and administration of the contracts without litigation helps our clients to achieve objectives and creates a significant savings for the County.</p> <p><b>How are we doing?</b> There were 8 lawsuits filed against the County that were contracted projects and/or Board of Supervisors agenda items. The Actual Results of 99% is based on over 1400 agenda items and/or contracted projects during the 04/05 fiscal year.</p>						

**Department Goal:** Provide effective legal representation to County boards, commissions, departments, and agencies in a cost-effective manner.

**Communitywide Result Link:** A prosperous and well-governed community.

**8. Performance Measure:** County Counsel expenses as a percentage of the County Budget.

00-01 Actual Results	01-02 Actual Results	02-03 Actual Results	03-04 Actual Results	04-05 Adopted	04-05 Actual Results	05-06 Target
New measure	.66%	.83%	.77%	.77%	.79%	.77%
<p><b>What:</b> This measure shows the relationship of County Counsel expenses to the County's budget by dividing the County Counsel Net County Cost by the County's total budget.</p> <p><b>Why:</b> County Counsel strives to keep costs as low as possible, while providing effective legal advice and representation to its clients.</p> <p><b>How are we doing?</b> County Counsel required an adjustment of \$61,000 in the Salaries &amp; Benefits accounts at year-end to cover the COLA for the year, which was calculated by the Auditor's Office to be \$91,352. There were also adjustments to the Professional &amp; Special Services account in the amount of \$40,000 due to expenditures at the direction of the Board, as well as \$19,000 to the Rents &amp; Leases account due to the delay in the completion of the new Government Center. At year end, over \$70,000 remained in the budget that reverted to the General Fund.</p>						

**The following is a listing major litigation matters that County Counsel is currently handling or has recently concluded, with a description of results achieved to date and objectives for FY 2005/06:**

- Van Gordon Creek Dump Site Administrative Proceedings: We have successfully persuaded the State and Regional Water Quality Control Board that Cambria CSD and landowner should be responsible parties along with the County. A lawsuit was filed by the landowner, which will allow the County to receive reimbursement for defense costs from its insurer. We will continue the attempt to achieve a fair and reasonable plan for protecting ground water at old dumpsite and if litigation is triggered, successfully obtain insurance coverage for the County's share.
- U. S. Fish and Wildlife Service (USFWS) Administrative Proceedings: We are working on a mitigation agreement with federal and state regulators regarding a steelhead problem at the Lopez Dam construction site. This work will continue in FY 2005/06.

- Diablo Canyon (NRC dry cask storage license): The County has filed an amicus brief challenging NRC license without adequate review of terrorism issues. A brief was filed with the Ninth circuit Court of Appeals on behalf of the Petitioner. Our office will participate further as directed by the Board.
- Duke Energy assessment appeal: Duke energy is seeking negative supplemental assessment that it contends will produce over \$700,000 tax refund. The Court overruled our demurrer and we will continue to defend our actions.
- TOSCO Litigation: The Assessment Appeals Board (AAB) upheld the value of \$156 million, over TOSCO's contention that the refinery should be valued at \$65 million. The Court found errors in the Assessment Appeals Board decision. The case has been remanded to the Assessment Appeals Board and will likely be heard in early 2005, after which further proceedings may ensue. We will continue to defend this action.
- Casmalia Litigation: We are still working with EPA counsel on an administrative consent decree, and will continue to monitor action limiting liability to that discussed with Board of Supervisors in closed session.
- Greenway Environmental Services Litigation: This case was settled for over \$500,000 in favor of the County. We have entered a multi-million dollar judgment against the Greenway defendants to enforce the settlement agreement after their breach of the agreement. We will continue our collection effort in Arizona and elsewhere to recover on the judgment against these defendants.
- State of California v. Babbitt: The County won at Trial Court and we won in Ninth Circuit Court of Appeals. Trial Court has retained jurisdiction to monitor CSMA compliance. Settlement efforts by MMS to buy out leases have failed. We will continue to monitor compliance.
- Harker Wade Litigation: this case involves a challenge of Assessment Appeals Board decision by Wade regarding Pismo Beach motel property. We won the case at Superior Court, upholding the AAB decision. The Appellant's Opening Brief has been received. Respondent's Brief was filed in February 2005.
- Gurican Litigation: serious injury lawsuit which alleges defect in county and state roads. Discover phase continues in 05/06 and we will continue to assist outside counsel in defense of this case.
- Before it's Gone Litigation: This case was filed challenging the County's approval of the El Pomar/Estrella Area Plan based on alleged violations of CEQA, the Brown Act and the Political Reform Act. We are currently waiting for the record to be prepared and will continue to defend our action.
- Capuano Litigation: This case was filed challenging the County's approval of a sand dune building project by State Parks. No hearing has been set but a judge has been assigned to the case. In the next year we will attempt to settle this case.
- Kyle Litigation: This case was filed by neighboring property owners challenging the County's approval of a concrete recycling facility. The record is being prepared and we will continue to defend the action.
- Manufactured Home Communities Litigation: Two cases have been filed; one in state court and the other in federal court, challenging the Board of Supervisors and the Mobilehome Rent Review Board's decision that a rent control ordinance applied to Sea Oaks Mobile Home Park. A motion to dismiss case is expected to be heard in January, 2005, and we will continue to defend this action.
- San Luis Obispo Mothers for Peace Litigation: The County has filed an amicus brief in the Ninth Circuit Court of Appeal. The case contests NRC's approval of a license for spent fuel storage. We are waiting oral argument and expect a decision in FY 2005/06.
- Concerned Citizens of Los Osos Litigation: Plaintiffs seek to set aside the County decision and the Coastal Commission decision on Los Osos Sewer Plant Coastal Development Permit. The record will be prepared in FY 2005/06.

- Santa Margarita Area Together Litigation: This case challenges the recent amendments to Land Use Ordinances regarding agricultural clustered subdivisions and minimum parcel size. We are currently awaiting preparation of record, and will continue to defend this action.
- Save the Park Litigation: This case was filed challenging County's approval of tree removal program operated by State Parks. State's demurrer will be heard in January 2005, and we will continue to defend this action.
- Cambria Community Services District Litigation: This case was filed challenging the actions of County and Coastal Commission that stopped construction of the district's water tanks. The record being prepared and we will continue to defend this action.
- Nipomo Community Services District Litigation: This case challenges the County's decision to lift restrictions on the Summit Station subdivision. We are currently awaiting service of lawsuit and will defend this action.
- Maria Vista Estates Litigation: This action challenges Board of Supervisors decision not to reduce Subdivision Payment Bond. The record is currently being prepared and we will defend this action.

**The following is a list of the major projects (not mentioned previously) where County Counsel advises throughout the duration of the project in an effort to avoid situations that could lead to litigation in the future.**

- New Government Center – We expect claims from the County and contractors concerning construction delays. Delays are well documented and should help County's position.
- Airport Runway Extension – We have received federal grant and started work on property acquisition. Our objective is that the client will bring in this project with little or no general fund involvement.
- Legal advice to Board of Supervisors, Planning Department, Public Works and General Services concerning the Los Osos Habitat Conservation Plan. We are monitoring development of plan and have grave concerns about the proposed County financial commitments and liabilities. We will implement the Board's decision as directed.
- Legal advice to Assessment Appeals Board, Civil Service Commission, Board Construction Appeals, IOD Board, APCD Hearing Board, Agricultural Commission Hearing Officer, Animal Regulation Hearing Officer and Subdivision Review Board. We have had successful resolution of disputes and our goal is to have no decisions overturned in court.